

AMENDED IN ASSEMBLY SEPTEMBER 4, 2009

AMENDED IN ASSEMBLY AUGUST 17, 2009

AMENDED IN ASSEMBLY JULY 6, 2009

AMENDED IN ASSEMBLY JUNE 22, 2009

AMENDED IN SENATE APRIL 21, 2009

SENATE BILL

No. 820

Introduced by Senators Negrete McLeod and Aanestad

March 10, 2009

An act to amend Sections 800, 803.1, 805, 805.1, 805.5, 821.5, and 2027 of, ~~and to add Section 805.01 to~~ *to add Sections 805.01 and 821.4 to, and to repeal Section 821.6 of*, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 820, as amended, Negrete McLeod. Healing arts: peer review.

Existing law provides for the professional review of specified healing arts licentiates through a peer review process.

This bill would define the term "peer review" for purposes of those provisions.

Under existing law, specified persons are required to file a report, designated as an "805 report," with a licensing board within 15 days after a specified action is taken against a person licensed by that board.

This bill would also require specified persons to file a report with a licensing board within 15 days after a peer review body makes a decision or recommendation regarding the disciplinary action to be taken against a licentiate of that board based on the peer review body's determination, following formal investigation, that the licentiate may have engaged in

various acts, including ~~gross negligence~~, incompetence, substance abuse, excessive prescribing or furnishing of controlled substances, or sexual misconduct, among other things. The bill would authorize the board to inspect and copy certain documents in the record of that investigation.

Existing law requires the board to maintain an 805 report for a period of 3 years after receipt.

This bill would require the board to maintain the report electronically.

Existing law authorizes the Medical Board of California, the Osteopathic Medical Board of California, and the Dental Board of California to inspect and copy certain documents in the record of any disciplinary proceeding resulting in action that is required to be reported in an 805 report.

This bill would specify that the boards have the authority to also inspect, *as permitted by other applicable law*, any certified copy of medical records in the record of the disciplinary proceeding.

Existing law requires specified healing arts boards to maintain a central file of their licensees containing, among other things, disciplinary information reported through 805 reports.

Under this bill, if a court finds, in a final judgment, that the peer review resulting in the 805 report was conducted in bad faith and the licensee who is the subject of the report notifies the board of that finding, the board would be required to include that finding in the licensee's central file.

Existing law requires the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine to disclose an 805 report to specified health care entities and to disclose certain hospital disciplinary actions to inquiring members of the public. Existing law also requires the Medical Board of California to post hospital disciplinary actions regarding its licensees on the Internet.

This bill would prohibit those disclosures, and would require the Medical Board of California to remove certain information posted on the Internet, if a court finds, in a final judgment, that the peer review resulting in the 805 report or the hospital disciplinary action was conducted in bad faith and the licensee notifies the board of that finding. The bill would also require the Medical Board of California to include certain exculpatory or explanatory statements in those disclosures or postings and would require the board to post on the Internet a factsheet that explains and provides information on the 805 reporting requirements.

Existing law also requires the Medical Board of California, the Osteopathic Medical Board of California, and the California Board of Podiatric Medicine to disclose to an inquiring member of the public information regarding enforcement actions taken against a licensee by the board or by another state or jurisdiction.

This bill would also require those boards to make those disclosures regarding enforcement actions taken against former licensees.

Existing law requires a peer review body that reviews physicians and surgeons to, under specified circumstances, report certain information to an obsolete diversion program within the Medical Board of California.

This bill would instead require the report to be made directly to the executive director of the board and would make other conforming changes.

The bill would make related nonsubstantive changes.

The bill would also provide that it shall become operative only if AB 120 is also enacted and becomes operative.

The bill would incorporate additional changes to Section 800 of the Business and Professions Code, proposed by SB 819, to be operative only if both bills are chaptered and become effective on or before January 1, 2010, and this bill is chaptered last.

The bill would incorporate additional changes to Section 805 of the Business and Professions Code, proposed by SB 821, to be operative only if both bills are chaptered and become effective on or before January 1, 2010, and this bill is chaptered last.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 800 of the Business and Professions Code
2 is amended to read:
3 800. (a) The Medical Board of California, the Board of
4 Psychology, the Dental Board of California, the Osteopathic
5 Medical Board of California, the State Board of Chiropractic
6 Examiners, the Board of Registered Nursing, the Board of
7 Vocational Nursing and Psychiatric Technicians, the State Board
8 of Optometry, the Veterinary Medical Board, the Board of
9 Behavioral Sciences, the Physical Therapy Board of California,
10 the California State Board of Pharmacy, and the Speech-Language

1 Pathology and Audiology Board shall each separately create and
2 maintain a central file of the names of all persons who hold a
3 license, certificate, or similar authority from that board. Each
4 central file shall be created and maintained to provide an individual
5 historical record for each licensee with respect to the following
6 information:

7 (1) Any conviction of a crime in this or any other state that
8 constitutes unprofessional conduct pursuant to the reporting
9 requirements of Section 803.

10 (2) Any judgment or settlement requiring the licensee or his or
11 her insurer to pay any amount of damages in excess of three
12 thousand dollars (\$3,000) for any claim that injury or death was
13 proximately caused by the licensee's negligence, error or omission
14 in practice, or by rendering unauthorized professional services,
15 pursuant to the reporting requirements of Section 801 or 802.

16 (3) Any public complaints for which provision is made pursuant
17 to subdivision (b).

18 (4) Disciplinary information reported pursuant to Section 805,
19 including any additional exculpatory or explanatory statements
20 submitted by the licensee pursuant to subdivision (f) of Section
21 805. If a court finds, in a final judgment, that the peer review
22 resulting in the 805 report was conducted in bad faith and the
23 licensee who is the subject of the report notifies the board of that
24 finding, the board shall include that finding in the central file. For
25 purposes of this paragraph, "peer review" has the same meaning
26 as defined in Section 805.

27 (5) Information reported pursuant to Section 805.01, including
28 any explanatory or exculpatory information submitted by the
29 licensee pursuant to subdivision (b) of Section 805.01.

30 (b) Each board shall prescribe and promulgate forms on which
31 members of the public and other licensees or certificate holders
32 may file written complaints to the board alleging any act of
33 misconduct in, or connected with, the performance of professional
34 services by the licensee.

35 If a board, or division thereof, a committee, or a panel has failed
36 to act upon a complaint or report within five years, or has found
37 that the complaint or report is without merit, the central file shall
38 be purged of information relating to the complaint or report.

39 Notwithstanding this subdivision, the Board of Psychology, the
40 Board of Behavioral Sciences, and the Respiratory Care Board of

1 California shall maintain complaints or reports as long as each
2 board deems necessary.

3 (c) The contents of any central file that are not public records
4 under any other provision of law shall be confidential except that
5 the licensee involved, or his or her counsel or representative, shall
6 have the right to inspect and have copies made of his or her
7 complete file except for the provision that may disclose the identity
8 of an information source. For the purposes of this section, a board
9 may protect an information source by providing a copy of the
10 material with only those deletions necessary to protect the identity
11 of the source or by providing a comprehensive summary of the
12 substance of the material. Whichever method is used, the board
13 shall ensure that full disclosure is made to the subject of any
14 personal information that could reasonably in any way reflect or
15 convey anything detrimental, disparaging, or threatening to a
16 licensee's reputation, rights, benefits, privileges, or qualifications,
17 or be used by a board to make a determination that would affect
18 a licensee's rights, benefits, privileges, or qualifications. The
19 information required to be disclosed pursuant to Section 803.1
20 shall not be considered among the contents of a central file for the
21 purposes of this subdivision.

22 The licensee may, but is not required to, submit any additional
23 exculpatory or explanatory statement or other information that the
24 board shall include in the central file.

25 Each board may permit any law enforcement or regulatory
26 agency when required for an investigation of unlawful activity or
27 for licensing, certification, or regulatory purposes to inspect and
28 have copies made of that licensee's file, unless the disclosure is
29 otherwise prohibited by law.

30 These disclosures shall effect no change in the confidential status
31 of these records.

32 *SEC. 1.5. Section 800 of the Business and Professions Code*
33 *is amended to read:*

34 800. (a) The Medical Board of California, the Board of
35 Psychology, the Dental Board of California, the Osteopathic
36 Medical Board of California, the State Board of Chiropractic
37 Examiners, the Board of Registered Nursing, the Board of
38 Vocational Nursing and Psychiatric Technicians, the State Board
39 of Optometry, the Veterinary Medical Board, the Board of
40 Behavioral Sciences, the Physical Therapy Board of California,

1 the California State Board of Pharmacy, ~~and~~ the Speech-Language
2 Pathology and Audiology Board, *the California Board of*
3 *Occupational Therapy, and the Acupuncture Board* shall each
4 separately create and maintain a central file of the names of all
5 persons who hold a license, certificate, or similar authority from
6 that board. Each central file shall be created and maintained to
7 provide an individual historical record for each licensee with
8 respect to the following information:

9 (1) Any conviction of a crime in this or any other state that
10 constitutes unprofessional conduct pursuant to the reporting
11 requirements of Section 803.

12 (2) Any judgment or settlement requiring the licensee or his or
13 her insurer to pay any amount of damages in excess of three
14 thousand dollars (\$3,000) for any claim that injury or death was
15 proximately caused by the licensee's negligence, error or omission
16 in practice, or by rendering unauthorized professional services,
17 pursuant to the reporting requirements of Section 801 or 802.

18 (3) Any public complaints for which provision is made pursuant
19 to subdivision (b).

20 (4) Disciplinary information reported pursuant to Section 805,
21 *including any additional exculpatory or explanatory statements*
22 *submitted by the licensee pursuant to subdivision (f) of Section*
23 *805. If a court finds, in a final judgment, that the peer review*
24 *resulting in the 805 report was conducted in bad faith and the*
25 *licensee who is the subject of the report notifies the board of that*
26 *finding, the board shall include that finding in the central file. For*
27 *purposes of this paragraph, "peer review" has the same meaning*
28 *as defined in Section 805.*

29 (5) *Information reported pursuant to Section 805.01, including*
30 *any explanatory or exculpatory information submitted by the*
31 *licensee pursuant to subdivision (b) of Section 805.01.*

32 (b) Each board shall prescribe and promulgate forms on which
33 members of the public and other licensees or certificate holders
34 may file written complaints to the board alleging any act of
35 misconduct in, or connected with, the performance of professional
36 services by the licensee.

37 If a board, or division thereof, a committee, or a panel has failed
38 to act upon a complaint or report within five years, or has found
39 that the complaint or report is without merit, the central file shall
40 be purged of information relating to the complaint or report.

1 Notwithstanding this subdivision, the Board of Psychology, the
2 Board of Behavioral Sciences, and the Respiratory Care Board of
3 California shall maintain complaints or reports as long as each
4 board deems necessary.

5 (c) The contents of any central file that are not public records
6 under any other provision of law shall be confidential except that
7 the licensee involved, or his or her counsel or representative, shall
8 have the right to inspect and have copies made of his or her
9 complete file except for the provision that may disclose the identity
10 of an information source. For the purposes of this section, a board
11 may protect an information source by providing a copy of the
12 material with only those deletions necessary to protect the identity
13 of the source or by providing a comprehensive summary of the
14 substance of the material. Whichever method is used, the board
15 shall ensure that full disclosure is made to the subject of any
16 personal information that could reasonably in any way reflect or
17 convey anything detrimental, disparaging, or threatening to a
18 licensee's reputation, rights, benefits, privileges, or qualifications,
19 or be used by a board to make a determination that would affect
20 a licensee's rights, benefits, privileges, or qualifications. The
21 information required to be disclosed pursuant to Section 803.1
22 shall not be considered among the contents of a central file for the
23 purposes of this subdivision.

24 The licensee may, but is not required to, submit any additional
25 exculpatory or explanatory statement or other information that the
26 board shall include in the central file.

27 Each board may permit any law enforcement or regulatory
28 agency when required for an investigation of unlawful activity or
29 for licensing, certification, or regulatory purposes to inspect and
30 have copies made of that licensee's file, unless the disclosure is
31 otherwise prohibited by law.

32 These disclosures shall effect no change in the confidential status
33 of these records.

34 SEC. 2. Section 803.1 of the Business and Professions Code
35 is amended to read:

36 803.1. (a) Notwithstanding any other provision of law, the
37 Medical Board of California, the Osteopathic Medical Board of
38 California, and the California Board of Podiatric Medicine shall
39 disclose to an inquiring member of the public information regarding
40 any enforcement actions taken against a licensee, including a

1 former licensee, by the board or by another state or jurisdiction,
2 including all of the following:

3 (1) Temporary restraining orders issued.

4 (2) Interim suspension orders issued.

5 (3) Revocations, suspensions, probations, or limitations on
6 practice ordered by the board, including those made part of a
7 probationary order or stipulated agreement.

8 (4) Public letters of reprimand issued.

9 (5) Infractions, citations, or fines imposed.

10 (b) Notwithstanding any other provision of law, in addition to
11 the information provided in subdivision (a), the Medical Board of
12 California, the Osteopathic Medical Board of California, and the
13 California Board of Podiatric Medicine shall disclose to an
14 inquiring member of the public all of the following:

15 (1) Civil judgments in any amount, whether or not vacated by
16 a settlement after entry of the judgment, that were not reversed on
17 appeal and arbitration awards in any amount of a claim or action
18 for damages for death or personal injury caused by the physician
19 and surgeon's negligence, error, or omission in practice, or by his
20 or her rendering of unauthorized professional services.

21 (2) (A) All settlements in the possession, custody, or control
22 of the board shall be disclosed for a licensee in the low-risk
23 category if there are three or more settlements for that licensee
24 within the last 10 years, except for settlements by a licensee
25 regardless of the amount paid where (i) the settlement is made as
26 a part of the settlement of a class claim, (ii) the licensee paid in
27 settlement of the class claim the same amount as the other licensees
28 in the same class or similarly situated licensees in the same class,
29 and (iii) the settlement was paid in the context of a case where the
30 complaint that alleged class liability on behalf of the licensee also
31 alleged a products liability class action cause of action. All
32 settlements in the possession, custody, or control of the board shall
33 be disclosed for a licensee in the high-risk category if there are
34 four or more settlements for that licensee within the last 10 years
35 except for settlements by a licensee regardless of the amount paid
36 where (i) the settlement is made as a part of the settlement of a
37 class claim, (ii) the licensee paid in settlement of the class claim
38 the same amount as the other licensees in the same class or
39 similarly situated licensees in the same class, and (iii) the
40 settlement was paid in the context of a case where the complaint

1 that alleged class liability on behalf of the licensee also alleged a
2 products liability class action cause of action. Classification of a
3 licensee in either a “high-risk category” or a “low-risk category”
4 depends upon the specialty or subspecialty practiced by the licensee
5 and the designation assigned to that specialty or subspecialty by
6 the Medical Board of California, as described in subdivision (f).
7 For the purposes of this paragraph, “settlement” means a settlement
8 of an action described in paragraph (1) entered into by the licensee
9 on or after January 1, 2003, in an amount of thirty thousand dollars
10 (\$30,000) or more.

11 (B) The board shall not disclose the actual dollar amount of a
12 settlement but shall put the number and amount of the settlement
13 in context by doing the following:

14 (i) Comparing the settlement amount to the experience of other
15 licensees within the same specialty or subspecialty, indicating if
16 it is below average, average, or above average for the most recent
17 10-year period.

18 (ii) Reporting the number of years the licensee has been in
19 practice.

20 (iii) Reporting the total number of licensees in that specialty or
21 subspecialty, the number of those who have entered into a
22 settlement agreement, and the percentage that number represents
23 of the total number of licensees in the specialty or subspecialty.

24 (3) Current American Board of Medical Specialty certification
25 or board equivalent as certified by the Medical Board of California,
26 the Osteopathic Medical Board of California, or the California
27 Board of Podiatric Medicine.

28 (4) Approved postgraduate training.

29 (5) Status of the license of a licensee. By January 1, 2004, the
30 Medical Board of California, the Osteopathic Medical Board of
31 California, and the California Board of Podiatric Medicine shall
32 adopt regulations defining the status of a licensee. The board shall
33 employ this definition when disclosing the status of a licensee
34 pursuant to Section 2027.

35 (6) Any summaries of hospital disciplinary actions that result
36 in the termination or revocation of a licensee’s staff privileges for
37 medical disciplinary cause or reason, unless a court finds, in a final
38 judgment, that the peer review resulting in the disciplinary action
39 was conducted in bad faith and the licensee notifies the board of
40 that finding. For purposes of this paragraph, “peer review” has the

1 same meaning as defined in Section 805. In addition, any
2 exculpatory or explanatory statements submitted by the licentiate
3 electronically pursuant to subdivision (f) of Section 805 shall be
4 disclosed.

5 (c) Notwithstanding any other provision of law, the Medical
6 Board of California, the Osteopathic Medical Board of California,
7 and the California Board of Podiatric Medicine shall disclose to
8 an inquiring member of the public information received regarding
9 felony convictions of a physician and surgeon or doctor of podiatric
10 medicine.

11 (d) The Medical Board of California, the Osteopathic Medical
12 Board of California, and the California Board of Podiatric Medicine
13 may formulate appropriate disclaimers or explanatory statements
14 to be included with any information released, and may by
15 regulation establish categories of information that need not be
16 disclosed to an inquiring member of the public because that
17 information is unreliable or not sufficiently related to the licensee's
18 professional practice. The Medical Board of California, the
19 Osteopathic Medical Board of California, and the California Board
20 of Podiatric Medicine shall include the following statement when
21 disclosing information concerning a settlement:

22 "Some studies have shown that there is no significant correlation
23 between malpractice history and a doctor's competence. At the
24 same time, the State of California believes that consumers should
25 have access to malpractice information. In these profiles, the State
26 of California has given you information about both the malpractice
27 settlement history for the doctor's specialty and the doctor's history
28 of settlement payments only if in the last 10 years, the doctor, if
29 in a low-risk specialty, has three or more settlements or the doctor,
30 if in a high-risk specialty, has four or more settlements. The State
31 of California has excluded some class action lawsuits because
32 those cases are commonly related to systems issues such as product
33 liability, rather than questions of individual professional
34 competence and because they are brought on a class basis where
35 the economic incentive for settlement is great. The State of
36 California has placed payment amounts into three statistical
37 categories: below average, average, and above average compared
38 to others in the doctor's specialty. To make the best health care
39 decisions, you should view this information in perspective. You

1 could miss an opportunity for high-quality care by selecting a
2 doctor based solely on malpractice history.

3 When considering malpractice data, please keep in mind:

4 Malpractice histories tend to vary by specialty. Some specialties
5 are more likely than others to be the subject of litigation. This
6 report compares doctors only to the members of their specialty,
7 not to all doctors, in order to make an individual doctor's history
8 more meaningful.

9 This report reflects data only for settlements made on or after
10 January 1, 2003. Moreover, it includes information concerning
11 those settlements for a 10-year period only. Therefore, you should
12 know that a doctor may have made settlements in the 10 years
13 immediately preceding January 1, 2003, that are not included in
14 this report. After January 1, 2013, for doctors practicing less than
15 10 years, the data covers their total years of practice. You should
16 take into account the effective date of settlement disclosure as well
17 as how long the doctor has been in practice when considering
18 malpractice averages.

19 The incident causing the malpractice claim may have happened
20 years before a payment is finally made. Sometimes, it takes a long
21 time for a malpractice lawsuit to settle. Some doctors work
22 primarily with high-risk patients. These doctors may have
23 malpractice settlement histories that are higher than average
24 because they specialize in cases or patients who are at very high
25 risk for problems.

26 Settlement of a claim may occur for a variety of reasons that do
27 not necessarily reflect negatively on the professional competence
28 or conduct of the doctor. A payment in settlement of a medical
29 malpractice action or claim should not be construed as creating a
30 presumption that medical malpractice has occurred.

31 You may wish to discuss information in this report and the
32 general issue of malpractice with your doctor.”

33 (e) The Medical Board of California, the Osteopathic Medical
34 Board of California, and the California Board of Podiatric Medicine
35 shall, by regulation, develop standard terminology that accurately
36 describes the different types of disciplinary filings and actions to
37 take against a licensee as described in paragraphs (1) to (5),
38 inclusive, of subdivision (a). In providing the public with
39 information about a licensee via the Internet pursuant to Section
40 2027, the Medical Board of California, the Osteopathic Medical

1 Board of California, and the California Board of Podiatric Medicine
2 shall not use the terms “enforcement,” “discipline,” or similar
3 language implying a sanction unless the physician and surgeon
4 has been the subject of one of the actions described in paragraphs
5 (1) to (5), inclusive, of subdivision (a).

6 (f) The Medical Board of California shall adopt regulations no
7 later than July 1, 2003, designating each specialty and subspecialty
8 practice area as either high risk or low risk. In promulgating these
9 regulations, the board shall consult with commercial underwriters
10 of medical malpractice insurance companies, health care systems
11 that self-insure physicians and surgeons, and representatives of
12 the California medical specialty societies. The board shall utilize
13 the carriers’ statewide data to establish the two risk categories and
14 the averages required by subparagraph (B) of paragraph (2) of
15 subdivision (b). Prior to issuing regulations, the board shall
16 convene public meetings with the medical malpractice carriers,
17 self-insurers, and specialty representatives.

18 (g) The Medical Board of California, the Osteopathic Medical
19 Board of California, and the California Board of Podiatric Medicine
20 shall provide each licensee, including a former licensee under
21 subdivision (a), with a copy of the text of any proposed public
22 disclosure authorized by this section prior to release of the
23 disclosure to the public. The licensee shall have 10 working days
24 from the date the board provides the copy of the proposed public
25 disclosure to propose corrections of factual inaccuracies. Nothing
26 in this section shall prevent the board from disclosing information
27 to the public prior to the expiration of the 10-day period.

28 (h) Pursuant to subparagraph (A) of paragraph (2) of subdivision
29 (b), the specialty or subspecialty information required by this
30 section shall group physicians by specialty board recognized
31 pursuant to paragraph (5) of subdivision (h) of Section 651 unless
32 a different grouping would be more valid and the board, in its
33 statement of reasons for its regulations, explains why the validity
34 of the grouping would be more valid.

35 SEC. 3. Section 805 of the Business and Professions Code is
36 amended to read:

37 805. (a) As used in this section, the following terms have the
38 following definitions:

39 (1) (A) “Peer review” means ~~a process in which~~ both of the
40 following:

1 (i) *A process in which a peer review body reviews the basic*
2 *qualifications, staff privileges, employment, medical outcomes,*
3 *or professional conduct of licentiates to make recommendations*
4 *for quality improvement and education, if necessary, in order to*
5 *do either or both of the following:*

6 (I) Determine whether a licentiate may practice or continue to
7 practice in a health care facility, clinic, or other setting providing
8 medical services, and, if so, to determine the parameters of that
9 practice.

10 (II) Assess and improve the quality of care rendered in a health
11 care facility, clinic, or other setting providing medical services.

12 (ii) Any other activities of a peer review body ~~as defined in~~
13 ~~clause (iii) or (iv) of~~ *specified in* subparagraph (B).

14 (B) “Peer review body” includes:

15 (i) A medical or professional staff of any health care facility or
16 clinic licensed under Division 2 (commencing with Section 1200)
17 of the Health and Safety Code or of a facility certified to participate
18 in the federal Medicare Program as an ambulatory surgical center.

19 (ii) A health care service plan ~~registered~~ *licensed* under Chapter
20 2.2 (commencing with Section 1340) of Division 2 of the Health
21 and Safety Code or a disability insurer that contracts with
22 licentiates to provide services at alternative rates of payment
23 pursuant to Section 10133 of the Insurance Code.

24 (iii) Any medical, psychological, marriage and family therapy,
25 social work, dental, or podiatric professional society having as
26 members at least 25 percent of the eligible licentiates in the area
27 in which it functions (which must include at least one county),
28 which is not organized for profit and which has been determined
29 to be exempt from taxes pursuant to Section 23701 of the Revenue
30 and Taxation Code.

31 (iv) A committee organized by any entity consisting of or
32 employing more than 25 licentiates of the same class that functions
33 for the purpose of reviewing the quality of professional care
34 provided by members or employees of that entity.

35 (2) “Licentiate” means a physician and surgeon, doctor of
36 podiatric medicine, clinical psychologist, marriage and family
37 therapist, clinical social worker, or dentist. “Licentiate” also
38 includes a person authorized to practice medicine pursuant to
39 Section 2113.

1 (3) “Agency” means the relevant state licensing agency having
2 regulatory jurisdiction over the licentiates listed in paragraph (2).

3 (4) “Staff privileges” means any arrangement under which a
4 licentiate is allowed to practice in or provide care for patients in
5 a health facility. Those arrangements shall include, but are not
6 limited to, full staff privileges, active staff privileges, limited staff
7 privileges, auxiliary staff privileges, provisional staff privileges,
8 temporary staff privileges, courtesy staff privileges, locum tenens
9 arrangements, and contractual arrangements to provide professional
10 services, including, but not limited to, arrangements to provide
11 outpatient services.

12 (5) “Denial or termination of staff privileges, membership, or
13 employment” includes failure or refusal to renew a contract or to
14 renew, extend, or reestablish any staff privileges, if the action is
15 based on medical disciplinary cause or reason.

16 (6) “Medical disciplinary cause or reason” means that aspect
17 of a licentiate’s competence or professional conduct that is
18 reasonably likely to be detrimental to patient safety or to the
19 delivery of patient care.

20 (7) “805 report” means the written report required under
21 subdivision (b).

22 (b) The chief of staff of a medical or professional staff or other
23 chief executive officer, medical director, or administrator of any
24 peer review body and the chief executive officer or administrator
25 of any licensed health care facility or clinic shall file an 805 report
26 with the relevant agency within 15 days after the effective date on
27 which any of the following occur as a result of an action of a peer
28 review body:

29 (1) A licentiate’s application for staff privileges or membership
30 is denied or rejected for a medical disciplinary cause or reason.

31 (2) A licentiate’s membership, staff privileges, or employment
32 is terminated or revoked for a medical disciplinary cause or reason.

33 (3) Restrictions are imposed, or voluntarily accepted, on staff
34 privileges, membership, or employment for a cumulative total of
35 30 days or more for any 12-month period, for a medical disciplinary
36 cause or reason.

37 (c) If a licentiate undertakes any action listed in paragraph (1),
38 (2), or (3) after receiving notice of a pending investigation initiated
39 for a medical disciplinary cause or reason or after receiving notice
40 that his or her application for membership, ~~staff privileges, or~~

1 ~~employment or staff privileges~~ is denied or will be denied for a
2 medical disciplinary cause or reason, the chief of staff of a medical
3 or professional staff or other chief executive officer, medical
4 director, or administrator of any peer review body and the chief
5 executive officer or administrator of any licensed health care
6 facility or clinic where the licentiate is employed or has staff
7 privileges or membership or where the licentiate applied for staff
8 privileges, ~~membership, or employment or membership~~, or sought
9 the renewal thereof, shall file an 805 report with the relevant
10 agency within 15 days after the licentiate undertakes the action:

11 (1) Resigns or takes a leave of absence from membership, staff
12 privileges, or employment.

13 (2) Withdraws or abandons his or her application for
14 membership, ~~staff privileges, or employment or staff privileges~~.

15 (3) Withdraws or abandons his or her request for renewal of
16 membership, ~~staff privileges, or employment or staff privileges~~.

17 (d) For purposes of filing an 805 report, the signature of at least
18 one of the individuals indicated in subdivision (b) or (c) on the
19 completed form shall constitute compliance with the requirement
20 to file the report.

21 (e) An 805 report shall also be filed within 15 days following
22 the imposition of summary suspension of staff privileges,
23 membership, or employment, if the summary suspension remains
24 in effect for a period in excess of 14 days.

25 (f) A copy of the 805 report, and a notice advising the licentiate
26 of his or her right to submit additional statements or other
27 information, electronically or otherwise, pursuant to Section 800,
28 shall be sent by the peer review body to the licentiate named in
29 the report. The notice shall also advise the licentiate that
30 information submitted electronically will be publicly disclosed to
31 those who request the information. The information to be reported
32 in an 805 report shall include the name and license number of the
33 licentiate involved, a description of the facts and circumstances
34 of the medical disciplinary cause or reason, and any other relevant
35 information deemed appropriate by the reporter.

36 A supplemental report shall also be made within 30 days
37 following the date the licentiate is deemed to have satisfied any
38 terms, conditions, or sanctions imposed as disciplinary action by
39 the reporting peer review body. In performing its dissemination
40 functions required by Section 805.5, the agency shall include a

1 copy of a supplemental report, if any, whenever it furnishes a copy
2 of the original 805 report.

3 If another peer review body is required to file an 805 report, a
4 health care service plan is not required to file a separate report
5 with respect to action attributable to the same medical disciplinary
6 cause or reason. If the Medical Board of California or a licensing
7 agency of another state revokes or suspends, without a stay, the
8 license of a physician and surgeon, a peer review body is not
9 required to file an 805 report when it takes an action as a result of
10 the revocation or suspension.

11 (g) The reporting required by this section shall not act as a
12 waiver of confidentiality of medical records and committee reports.
13 The information reported or disclosed shall be kept confidential
14 except as provided in subdivision (c) of Section 800 and Sections
15 803.1 and 2027, provided that a copy of the report containing the
16 information required by this section may be disclosed as required
17 by Section 805.5 with respect to reports received on or after
18 January 1, 1976.

19 (h) The Medical Board of California, the Osteopathic Medical
20 Board of California, and the Dental Board of California shall
21 disclose reports as required by Section 805.5.

22 (i) An 805 report shall be maintained electronically by an agency
23 for dissemination purposes for a period of three years after receipt.

24 (j) No person shall incur any civil or criminal liability as the
25 result of making any report required by this section.

26 (k) A willful failure to file an 805 report by any person who is
27 designated or otherwise required by law to file an 805 report is
28 punishable by a fine not to exceed one hundred thousand dollars
29 (\$100,000) per violation. The fine may be imposed in any civil or
30 administrative action or proceeding brought by or on behalf of any
31 agency having regulatory jurisdiction over the person regarding
32 whom the report was or should have been filed. If the person who
33 is designated or otherwise required to file an 805 report is a
34 licensed physician and surgeon, the action or proceeding shall be
35 brought by the Medical Board of California. The fine shall be paid
36 to that agency but not expended until appropriated by the
37 Legislature. A violation of this subdivision may constitute
38 unprofessional conduct by the licensee. A person who is alleged
39 to have violated this subdivision may assert any defense available

1 at law. As used in this subdivision, “willful” means a voluntary
2 and intentional violation of a known legal duty.

3 (l) Except as otherwise provided in subdivision (k), any failure
4 by the administrator of any peer review body, the chief executive
5 officer or administrator of any health care facility, or any person
6 who is designated or otherwise required by law to file an 805
7 report, shall be punishable by a fine that under no circumstances
8 shall exceed fifty thousand dollars (\$50,000) per violation. The
9 fine may be imposed in any civil or administrative action or
10 proceeding brought by or on behalf of any agency having
11 regulatory jurisdiction over the person regarding whom the report
12 was or should have been filed. If the person who is designated or
13 otherwise required to file an 805 report is a licensed physician and
14 surgeon, the action or proceeding shall be brought by the Medical
15 Board of California. The fine shall be paid to that agency but not
16 expended until appropriated by the Legislature. The amount of the
17 fine imposed, not exceeding fifty thousand dollars (\$50,000) per
18 violation, shall be proportional to the severity of the failure to
19 report and shall differ based upon written findings, including
20 whether the failure to file caused harm to a patient or created a
21 risk to patient safety; whether the administrator of any peer review
22 body, the chief executive officer or administrator of any health
23 care facility, or any person who is designated or otherwise required
24 by law to file an 805 report exercised due diligence despite the
25 failure to file or whether they knew or should have known that an
26 805 report would not be filed; and whether there has been a prior
27 failure to file an 805 report. The amount of the fine imposed may
28 also differ based on whether a health care facility is a small or
29 rural hospital as defined in Section 124840 of the Health and Safety
30 Code.

31 (m) A health care service plan-~~registered~~ *licensed* under Chapter
32 2.2 (commencing with Section 1340) of Division 2 of the Health
33 and Safety Code or a disability insurer that negotiates and enters
34 into a contract with licentiates to provide services at alternative
35 rates of payment pursuant to Section 10133 of the Insurance Code,
36 when determining participation with the plan or insurer, shall
37 evaluate, on a case-by-case basis, licentiates who are the subject
38 of an 805 report, and not automatically exclude or deselect these
39 licentiates.

1 *SEC. 3.5. Section 805 of the Business and Professions Code*
2 *is amended to read:*

3 805. (a) As used in this section, the following terms have the
4 following definitions:

5 (b) (A) *“Peer review” means both of the following:*

6 (i) *A process in which a peer review body reviews the basic*
7 *qualifications, staff privileges, employment, medical outcomes, or*
8 *professional conduct of licentiates to make recommendations for*
9 *quality improvement and education, if necessary, in order to do*
10 *either or both of the following:*

11 (I) *Determine whether a licentiate may practice or continue to*
12 *practice in a health care facility, clinic, or other setting providing*
13 *medical services, and, if so, to determine the parameters of that*
14 *practice.*

15 (II) *Assess and improve the quality of care rendered in a health*
16 *care facility, clinic, or other setting providing medical services.*

17 (ii) *Any other activities of a peer review body as specified in*
18 *subparagraph (B).*

19 ~~(A)~~

20 (B) *“Peer review body” includes:*

21 ~~(A)~~

22 (i) *A medical or professional staff of any health care facility or*
23 *clinic licensed under Division 2 (commencing with Section 1200)*
24 *of the Health and Safety Code or of a facility certified to participate*
25 *in the federal Medicare Program as an ambulatory surgical center.*

26 ~~(B)~~

27 (ii) *A health care service plan-registered licensed under Chapter*
28 *2.2 (commencing with Section 1340) of Division 2 of the Health*
29 *and Safety Code or a disability insurer that contracts with*
30 *licentiates to provide services at alternative rates of payment*
31 *pursuant to Section 10133 of the Insurance Code.*

32 ~~(C)~~

33 (iii) *Any medical, psychological, marriage and family therapy,*
34 *social work, dental, or podiatric professional society having as*
35 *members at least 25 percent of the eligible licentiates in the area*
36 *in which it functions (which must include at least one county),*
37 *which is not organized for profit and which has been determined*
38 *to be exempt from taxes pursuant to Section 23701 of the Revenue*
39 *and Taxation Code.*

40 ~~(D)~~

1 (iv) A committee organized by any entity consisting of or
2 employing more than 25 licentiates of the same class that functions
3 for the purpose of reviewing the quality of professional care
4 provided by members or employees of that entity.

5 (2) “Licentiate” means a physician and surgeon, doctor of
6 podiatric medicine, clinical psychologist, marriage and family
7 therapist, clinical social worker, or dentist. “Licentiate” also
8 includes a person authorized to practice medicine pursuant to
9 Section 2113 *or* 2168.

10 (3) “Agency” means the relevant state licensing agency having
11 regulatory jurisdiction over the licentiates listed in paragraph (2).

12 (4) “Staff privileges” means any arrangement under which a
13 licentiate is allowed to practice in or provide care for patients in
14 a health facility. Those arrangements shall include, but are not
15 limited to, full staff privileges, active staff privileges, limited staff
16 privileges, auxiliary staff privileges, provisional staff privileges,
17 temporary staff privileges, courtesy staff privileges, locum tenens
18 arrangements, and contractual arrangements to provide professional
19 services, including, but not limited to, arrangements to provide
20 outpatient services.

21 (5) “Denial or termination of staff privileges, membership, or
22 employment” includes failure or refusal to renew a contract or to
23 renew, extend, or reestablish any staff privileges, if the action is
24 based on medical disciplinary cause or reason.

25 (6) “Medical disciplinary cause or reason” means that aspect
26 of a licentiate’s competence or professional conduct that is
27 reasonably likely to be detrimental to patient safety or to the
28 delivery of patient care.

29 (7) “805 report” means the written report required under
30 subdivision (b).

31 (b) The chief of staff of a medical or professional staff or other
32 chief executive officer, medical director, or administrator of any
33 peer review body and the chief executive officer or administrator
34 of any licensed health care facility or clinic shall file an 805 report
35 with the relevant agency within 15 days after the effective date of
36 *on which* any of the following ~~that~~ occur as a result of an action
37 of a peer review body:

38 (1) A licentiate’s application for staff privileges or membership
39 is denied or rejected for a medical disciplinary cause or reason.

1 (2) A licentiate's membership, staff privileges, or employment
2 is terminated or revoked for a medical disciplinary cause or reason.

3 (3) Restrictions are imposed, or voluntarily accepted, on staff
4 privileges, membership, or employment for a cumulative total of
5 30 days or more for any 12-month period, for a medical disciplinary
6 cause or reason.

7 (c) ~~The~~ *If a licentiate undertakes any action listed in paragraph*
8 *(1), (2), or (3) after receiving notice of a pending investigation*
9 *initiated for a medical disciplinary cause or reason or after*
10 *receiving notice that his or her application for membership or staff*
11 *privileges is denied or will be denied for a medical disciplinary*
12 *cause or reason, the chief of staff of a medical or professional*
13 *staff or other chief executive officer, medical director, or*
14 *administrator of any peer review body and the chief executive*
15 *officer or administrator of any licensed health care facility or clinic*
16 *shall file an 805 report with the relevant agency within 15 days*
17 *after any of the following occur after notice of either an impending*
18 *investigation or the denial or rejection of the application for a*
19 *medical disciplinary cause or reason where the licentiate is*
20 *employed or has staff privileges or membership or where the*
21 *licentiate applied for staff privileges or membership, or sought*
22 *the renewal thereof, shall file an 805 report with the relevant*
23 *agency within 15 days after the licentiate undertakes the action:*

24 (1) ~~Resignation or~~ *Resigns or takes a leave of absence from*
25 *membership, staff privileges, or employment.*

26 (2) ~~The withdrawal or abandonment of a licentiate's~~ *Withdraws*
27 *or abandons his or her application for staff privileges or*
28 *membership or staff privileges.*

29 (3) ~~The~~ *Withdraws or abandons his or her request for renewal*
30 *of those privileges or membership is withdrawn or abandoned or*
31 *staff privileges.*

32 (d) For purposes of filing an 805 report, the signature of at least
33 one of the individuals indicated in subdivision (b) or (c) on the
34 completed form shall constitute compliance with the requirement
35 to file the report.

36 (e) An 805 report shall also be filed within 15 days following
37 the imposition of summary suspension of staff privileges,
38 membership, or employment, if the summary suspension remains
39 in effect for a period in excess of 14 days.

1 (f) A copy of the 805 report, and a notice advising the licentiate
2 of his or her right to submit additional statements or other
3 information, *electronically or otherwise*, pursuant to Section 800,
4 shall be sent by the peer review body to the licentiate named in
5 the report.

6 ~~The report.~~ *The notice shall also advise the licentiate that*
7 *information submitted electronically will be publicly disclosed to*
8 *those who request the information. The information to be reported*
9 *in an 805 report shall include the name and license number of the*
10 *licentiate involved, a description of the facts and circumstances*
11 *of the medical disciplinary cause or reason, and any other relevant*
12 *information deemed appropriate by the reporter.*

13 A supplemental report shall also be made within 30 days
14 following the date the licentiate is deemed to have satisfied any
15 terms, conditions, or sanctions imposed as disciplinary action by
16 the reporting peer review body. In performing its dissemination
17 functions required by Section 805.5, the agency shall include a
18 copy of a supplemental report, if any, whenever it furnishes a copy
19 of the original 805 report.

20 If another peer review body is required to file an 805 report, a
21 health care service plan is not required to file a separate report
22 with respect to action attributable to the same medical disciplinary
23 cause or reason. If the Medical Board of California or a licensing
24 agency of another state revokes or suspends, without a stay, the
25 license of a physician and surgeon, a peer review body is not
26 required to file an 805 report when it takes an action as a result of
27 the revocation or suspension.

28 (g) The reporting required by this section shall not act as a
29 waiver of confidentiality of medical records and committee reports.
30 The information reported or disclosed shall be kept confidential
31 except as provided in subdivision (c) of Section 800 and Sections
32 803.1 and 2027, provided that a copy of the report containing the
33 information required by this section may be disclosed as required
34 by Section 805.5 with respect to reports received on or after
35 January 1, 1976.

36 (h) The Medical Board of California, the Osteopathic Medical
37 Board of California, and the Dental Board of California shall
38 disclose reports as required by Section 805.5.

39 (i) An 805 report shall be maintained *electronically* by an agency
40 for dissemination purposes for a period of three years after receipt.

1 (j) No person shall incur any civil or criminal liability as the
2 result of making any report required by this section.

3 (k) A willful failure to file an 805 report by any person who is
4 designated or otherwise required by law to file an 805 report is
5 punishable by a fine not to exceed one hundred thousand dollars
6 (\$100,000) per violation. The fine may be imposed in any civil or
7 administrative action or proceeding brought by or on behalf of any
8 agency having regulatory jurisdiction over the person regarding
9 whom the report was or should have been filed. If the person who
10 is designated or otherwise required to file an 805 report is a
11 licensed physician and surgeon, the action or proceeding shall be
12 brought by the Medical Board of California. The fine shall be paid
13 to that agency but not expended until appropriated by the
14 Legislature. A violation of this subdivision may constitute
15 unprofessional conduct by the licensee. A person who is alleged
16 to have violated this subdivision may assert any defense available
17 at law. As used in this subdivision, “willful” means a voluntary
18 and intentional violation of a known legal duty.

19 (l) Except as otherwise provided in subdivision (k), any failure
20 by the administrator of any peer review body, the chief executive
21 officer or administrator of any health care facility, or any person
22 who is designated or otherwise required by law to file an 805
23 report, shall be punishable by a fine that under no circumstances
24 shall exceed fifty thousand dollars (\$50,000) per violation. The
25 fine may be imposed in any civil or administrative action or
26 proceeding brought by or on behalf of any agency having
27 regulatory jurisdiction over the person regarding whom the report
28 was or should have been filed. If the person who is designated or
29 otherwise required to file an 805 report is a licensed physician and
30 surgeon, the action or proceeding shall be brought by the Medical
31 Board of California. The fine shall be paid to that agency but not
32 expended until appropriated by the Legislature. The amount of the
33 fine imposed, not exceeding fifty thousand dollars (\$50,000) per
34 violation, shall be proportional to the severity of the failure to
35 report and shall differ based upon written findings, including
36 whether the failure to file caused harm to a patient or created a
37 risk to patient safety; whether the administrator of any peer review
38 body, the chief executive officer or administrator of any health
39 care facility, or any person who is designated or otherwise required
40 by law to file an 805 report exercised due diligence despite the

1 failure to file or whether they knew or should have known that an
2 805 report would not be filed; and whether there has been a prior
3 failure to file an 805 report. The amount of the fine imposed may
4 also differ based on whether a health care facility is a small or
5 rural hospital as defined in Section 124840 of the Health and Safety
6 Code.

7 (m) A health care service plan ~~registered~~ *licensed* under Chapter
8 2.2 (commencing with Section 1340) of Division 2 of the Health
9 and Safety Code or a disability insurer that negotiates and enters
10 into a contract with licentiates to provide services at alternative
11 rates of payment pursuant to Section 10133 of the Insurance Code,
12 when determining participation with the plan or insurer, shall
13 evaluate, on a case-by-case basis, licentiates who are the subject
14 of an 805 report, and not automatically exclude or deselect these
15 licentiates.

16 SEC. 4. Section 805.01 is added to the Business and Professions
17 Code, to read:

18 805.01. (a) As used in this section, the following terms have
19 the following definitions:

20 (1) "Agency" has the same meaning as defined in Section 805.

21 (2) "Formal investigation" means an investigation performed
22 by a peer review body based on an allegation that any of the acts
23 listed in paragraphs (1) to (4), inclusive, of subdivision (b)
24 occurred.

25 (3) "Licentiate" has the same meaning as defined in Section
26 805.

27 (4) "Peer review body" has the same meaning as defined in
28 Section 805.

29 (b) The chief of staff of a medical or professional staff or other
30 chief executive officer, medical director, or administrator of any
31 peer review body and the chief executive officer or administrator
32 of any licensed health care facility or clinic shall file a report with
33 the relevant agency within 15 days after a peer review body makes
34 a final decision or recommendation regarding the disciplinary
35 action, as specified in subdivision (b) of Section 805, resulting in
36 a final proposed action to be taken against a licentiate based on
37 the peer review body's determination, following formal
38 investigation of the licentiate, that any of the acts listed in
39 paragraphs (1) to (4), inclusive, may have occurred, regardless of
40 whether a hearing is held pursuant to Section 809.2. The licentiate

1 shall receive a notice of the proposed action as set forth in Section
2 809.1, which shall also include a notice advising the licensee of
3 the right to submit additional explanatory or exculpatory statements
4 electronically or otherwise.

5 ~~(1) Gross negligence, incompetence, or repeated negligent acts~~
6 ~~that involve death or serious bodily injury to one or more patients,~~
7 ~~such that the physician and surgeon represents a danger to the~~
8 ~~public.~~

9 *(1) Incompetence, or gross or repeated deviation from the*
10 *standard of care involving death or serious bodily injury to one*
11 *or more patients, such that the physician and surgeon poses a risk*
12 *to patient safety. This paragraph shall not be construed to affect*
13 *or require the imposition of immediate suspension pursuant to*
14 *Section 809.5.*

15 (2) Drug or alcohol abuse by a physician and surgeon involving
16 death or serious bodily injury to a patient.

17 (3) Repeated acts of clearly excessive prescribing, furnishing,
18 or administering of controlled substances or repeated acts of
19 prescribing, dispensing, or furnishing of controlled substances
20 without good faith effort prior examination of the patient and
21 medical reason therefor. However, in no event shall a physician
22 and surgeon prescribing, furnishing, or administering controlled
23 substances for intractable pain, consistent with lawful prescribing,
24 be reported for excessive prescribing and prompt review of the
25 applicability of these provisions shall be made in any complaint
26 that may implicate these provisions.

27 (4) Sexual misconduct with one or more patients during a course
28 of treatment or an examination.

29 (c) The relevant agency shall be entitled to inspect and copy the
30 following documents in the record of any formal investigation
31 required to be reported pursuant to subdivision (b):

32 (1) Any statement of charges.

33 (2) Any document, medical chart, or exhibit.

34 (3) Any opinions, findings, or conclusions.

35 (4) Any certified *copy of medical records, as permitted by other*
36 *applicable law.*

37 (d) The report provided pursuant to subdivision (b) and the
38 information disclosed pursuant to subdivision (c) shall be kept
39 confidential and shall not be subject to discovery, except that the
40 information may be reviewed as provided in subdivision (c) of

1 Section 800 and may be disclosed in any subsequent disciplinary
2 hearing conducted pursuant to the Administrative Procedure Act
3 (Chapter 5 (commencing with Section 11500) of Part 1 of Division
4 3 of Title 2 of the Government Code).

5 (e) The report required under this section shall be in addition
6 to any report required under Section 805.

7 (f) A peer review body shall not be required to make a report
8 pursuant to this section if that body does not make a final decision
9 or recommendation regarding the disciplinary action to be taken
10 against a licensee based on the body's determination that any of
11 the acts listed in paragraphs (1) to (4), inclusive, of subdivision
12 (b) may have occurred.

13 SEC. 5. Section 805.1 of the Business and Professions Code
14 is amended to read:

15 805.1. (a) The Medical Board of California, the Osteopathic
16 Medical Board of California, and the Dental Board of California
17 shall be entitled to inspect and copy the following documents in
18 the record of any disciplinary proceeding resulting in action that
19 is required to be reported pursuant to Section 805:

- 20 (1) Any statement of charges.
21 (2) Any document, medical chart, or exhibits in evidence.
22 (3) Any opinion, findings, or conclusions.
23 (4) Any certified copy of medical records, *as permitted by other*
24 *applicable law*.

25 (b) The information so disclosed shall be kept confidential and
26 not subject to discovery, in accordance with Section 800, except
27 that it may be reviewed, as provided in subdivision (c) of Section
28 800, and may be disclosed in any subsequent disciplinary hearing
29 conducted pursuant to the Administrative Procedure Act (Chapter
30 5 (commencing with Section 11500) of Part 1 of Division 3 of
31 Title 2 of the Government Code).

32 SEC. 6. Section 805.5 of the Business and Professions Code
33 is amended to read:

34 805.5. (a) Prior to granting or renewing staff privileges for
35 any physician and surgeon, psychologist, podiatrist, or dentist, any
36 health facility licensed pursuant to Division 2 (commencing with
37 Section 1200) of the Health and Safety Code, or any health care
38 service plan or medical care foundation, or the medical staff of the
39 institution shall request a report from the Medical Board of
40 California, the Board of Psychology, the Osteopathic Medical

1 Board of California, or the Dental Board of California to determine
2 if any report has been made pursuant to Section 805 indicating
3 that the applying physician and surgeon, psychologist, podiatrist,
4 or dentist has been denied staff privileges, been removed from a
5 medical staff, or had his or her staff privileges restricted as
6 provided in Section 805. The request shall include the name and
7 California license number of the physician and surgeon,
8 psychologist, podiatrist, or dentist. Furnishing of a copy of the 805
9 report shall not cause the 805 report to be a public record.

10 (b) Upon a request made by, or on behalf of, an institution
11 described in subdivision (a) or its medical staff, the board shall
12 furnish a copy of any report made pursuant to Section 805 as well
13 as any additional exculpatory or explanatory information submitted
14 electronically to the board by the licensee pursuant to subdivision
15 (f) of Section 805. However, the board shall not send a copy of a
16 report (1) if the denial, removal, or restriction was imposed solely
17 because of the failure to complete medical records, (2) if the board
18 has found the information reported is without merit, (3) if a court
19 finds, in a final judgment, that the peer review, as defined in
20 Section 805, resulting in the report was conducted in bad faith and
21 the licensee who is the subject of the report notifies the board of
22 that finding, or (4) if a period of three years has elapsed since the
23 report was submitted. This three-year period shall be tolled during
24 any period the licensee has obtained a judicial order precluding
25 disclosure of the report, unless the board is finally and permanently
26 precluded by judicial order from disclosing the report. If a request
27 is received by the board while the board is subject to a judicial
28 order limiting or precluding disclosure, the board shall provide a
29 disclosure to any qualified requesting party as soon as practicable
30 after the judicial order is no longer in force.

31 If the board fails to advise the institution within 30 working days
32 following its request for a report required by this section, the
33 institution may grant or renew staff privileges for the physician
34 and surgeon, psychologist, podiatrist, or dentist.

35 (c) Any institution described in subdivision (a) or its medical
36 staff that violates subdivision (a) is guilty of a misdemeanor and
37 shall be punished by a fine of not less than two hundred dollars
38 (\$200) nor more than one thousand two hundred dollars (\$1,200).

39 *SEC. 7. Section 821.4 is added to the Business and Professions*
40 *Code, to read:*

1 821.4. (a) *A peer review body, as defined in Section 805, that*
2 *reviews physicians and surgeons, shall, within 15 days of initiating*
3 *a formal investigation of a physician and surgeon's ability to*
4 *practice medicine safely based upon information indicating that*
5 *the physician and surgeon may be suffering from a disabling mental*
6 *or physical condition that poses a threat to patient care, report to*
7 *the executive director of the board the name of the physician and*
8 *surgeon under investigation and the general nature of the*
9 *investigation. A peer review body that has made a report to the*
10 *executive director of the board under this section shall also notify*
11 *the executive director of the board when it has completed or closed*
12 *an investigation.*

13 (b) *The executive director of the board, upon receipt of a report*
14 *pursuant to subdivision (a), shall contact the peer review body*
15 *that made the report within 60 days in order to determine the status*
16 *of the peer review body's investigation. The executive director of*
17 *the board shall contact the peer review body periodically thereafter*
18 *to monitor the progress of the investigation. At any time, if the*
19 *executive director of the board determines that the progress of the*
20 *investigation is not adequate to protect the public, the executive*
21 *director shall notify the chief of enforcement of the board, who*
22 *shall promptly conduct an investigation of the matter. Concurrently*
23 *with notifying the chief of enforcement, the executive director of*
24 *the board shall notify the reporting peer review body and the chief*
25 *executive officer or an equivalent officer of the hospital of its*
26 *decision to refer the case for investigation by the chief of*
27 *enforcement.*

28 (c) *For purposes of this section, "board" means the Medical*
29 *Board of California.*

30 (d) *For purposes of this section, "formal investigation" means*
31 *an investigation ordered by the peer review body's medical*
32 *executive committee or its equivalent, based upon information*
33 *indicating that the physician and surgeon may be suffering from*
34 *a disabling mental or physical condition that poses a threat to*
35 *patient care. "Formal investigation" does not include the usual*
36 *activities of the well-being or assistance committee or the usual*
37 *quality assessment and improvement activities undertaken by the*
38 *medical staff of a health facility in compliance with the licensing*
39 *and certification requirements for health facilities set forth in Title*
40 *22 of the California Code of Regulations, or preliminary*

1 *deliberations or inquiries of the executive committee to determine*
2 *whether to order a formal investigation.*

3 *(e) For purposes of this section, “usual activities” of the*
4 *well-being or assistance committee are activities to assist medical*
5 *staff members who may be impaired by chemical dependency or*
6 *mental illness to obtain necessary evaluation and rehabilitation*
7 *services that do not result in referral to the medical executive*
8 *committee.*

9 *(f) Information received by the executive director of the board*
10 *pursuant to this section shall be governed by, and shall be deemed*
11 *confidential to the same extent as records under, subdivision (d)*
12 *of Section 805.01. The records shall not be further disclosed by*
13 *the executive director of the board, except as provided in*
14 *subdivision (b).*

15 *(g) Upon receipt of notice from a peer review body that an*
16 *investigation has been closed and that the peer review body has*
17 *determined that there is no need for further action to protect the*
18 *public, the executive director of the board shall purge and destroy*
19 *all records in his or her possession pertaining to the investigation*
20 *unless the executive director has referred the matter to the chief*
21 *of enforcement pursuant to subdivision (b).*

22 *(h) A peer review body that has made a report under subdivision*
23 *(a) shall not be deemed to have waived the protections of Section*
24 *1157 of the Evidence Code. It is not the intent of the Legislature*
25 *in enacting this subdivision to affect pending litigation concerning*
26 *Section 1157 or to create any new confidentiality protection except*
27 *as specified in subdivision (f).*

28 *(i) The report required by this section shall be submitted on a*
29 *short form developed by the board. The contents of the short form*
30 *shall reflect the requirement of this section.*

31 *(j) Nothing in this section shall exempt a peer review body from*
32 *submitting a report required under Section 805 or 805.01.*

33 *SEC. 8. Section 821.5 of the Business and Professions Code*
34 *is amended to read:*

35 *821.5. (a) A peer review body, as defined in Section 805, that*
36 *reviews physicians and surgeons, shall, within 15 days of initiating*
37 *a formal investigation of a physician and surgeon’s ability to*
38 *practice medicine safely based upon information indicating that*
39 *the physician and surgeon may be suffering from a disabling mental*
40 *or physical condition that poses a threat to patient care, report to*

1 ~~the diversion program of the Medical Board~~ *executive director of*
2 ~~the board~~ the name of the physician and surgeon under
3 investigation and the general nature of the investigation. A peer
4 review body that has made a report to the ~~diversion program~~
5 ~~executive director of the board~~ under this section shall also notify
6 ~~the diversion program executive director of the board~~ when it has
7 completed or closed an investigation.

8 (b) ~~The diversion program administrator~~ *executive director of*
9 ~~the board~~, upon receipt of a report pursuant to subdivision (a),
10 shall contact the peer review body that made the report within 60
11 days in order to determine the status of the peer review body's
12 investigation. ~~The diversion program administrator~~ *executive*
13 ~~director of the board~~ shall contact the peer review body
14 periodically thereafter to monitor the progress of the investigation.
15 At any time, if the ~~diversion program administrator~~ *executive*
16 ~~director of the board~~ determines that the progress of the
17 investigation is not adequate to protect the public, the ~~diversion~~
18 ~~program administrator~~ *executive director* shall notify the chief of
19 enforcement of the ~~Division of Medical Quality of the Medical~~
20 ~~Board of California~~ *board*, who shall promptly conduct an
21 investigation of the matter. Concurrently with notifying the chief
22 of enforcement, the ~~diversion program administrator~~ *executive*
23 ~~director of the board~~ shall notify the reporting peer review body
24 and the chief executive officer or an equivalent officer of the
25 hospital of its decision to refer the case for investigation by the
26 chief of enforcement.

27 (c) *For purposes of this section, "board" means the Medical*
28 *Board of California.*

29 (e)

30 (d) For purposes of this section "formal investigation" means
31 an investigation ordered by the peer review body's medical
32 executive committee or its equivalent, based upon information
33 indicating that the physician and surgeon may be suffering from
34 a disabling mental or physical condition that poses a threat to
35 patient care. "Formal investigation" does not include the usual
36 activities of the well-being or assistance committee or the usual
37 quality assessment and improvement activities undertaken by the
38 medical staff of a health facility in compliance with the licensing
39 and certification requirements for health facilities set forth in Title
40 22 of the California Code of Regulations, or preliminary

1 deliberations or inquiries of the executive committee to determine
2 whether to order a formal investigation.

3 ~~For~~

4 (e) For purposes of this section, “usual activities” of the
5 well-being or assistance committee are activities to assist medical
6 staff members who may be impaired by chemical dependency or
7 mental illness to obtain necessary evaluation and rehabilitation
8 services that do not result in referral to the medical executive
9 committee.

10 ~~(d)~~

11 (f) Information received by the ~~diversion program~~ executive
12 director of the board pursuant to this section shall be governed
13 by, and shall be deemed confidential to the same extent as ~~program~~
14 records under, ~~Section 2355 subdivision (d) of Section 805.01~~. The
15 records shall not be further disclosed by the ~~diversion program~~
16 executive director of the board, except as provided in subdivision
17 (b).

18 ~~(e)~~

19 (g) Upon receipt of notice from a peer review body that an
20 investigation has been closed and that the peer review body has
21 determined that there is no need for further action to protect the
22 public, the ~~diversion program~~ executive director of the board shall
23 purge and destroy all records in its ~~his or her~~ possession pertaining
24 to the investigation unless the ~~diversion program administrator~~
25 executive director has referred the matter to the chief of
26 enforcement pursuant to subdivision (b).

27 ~~(f)~~

28 (h) A peer review body that has made a report under subdivision
29 (a) shall not be deemed to have waived the protections of Section
30 1157 of the Evidence Code. It is not the intent of the Legislature
31 in enacting this subdivision to affect pending litigation concerning
32 Section 1157 or to create any new confidentiality protection except
33 as specified in subdivision ~~(d)~~ (f). ~~“Pending litigation” shall include~~
34 ~~Arnett v. Dal Cielo (No. S048308), pending before the California~~
35 ~~Supreme Court.~~

36 ~~(g)~~

37 (i) The report required by this section shall be submitted on a
38 short form developed by the board. ~~The board shall develop the~~
39 ~~short form, the contents of which shall reflect the requirements of~~
40 ~~this section, within 30 days of the effective date of this section.~~

1 The board shall not require the filing of any report until the short
2 form is made available by the board. *The contents of the short form*
3 *shall reflect the requirements of this section.*

4 ~~(h) This section shall become operative on January 1, 1997,~~
5 ~~unless the regulations required to be adopted pursuant to Section~~
6 ~~821.6 are adopted prior to that date, in which case this section shall~~
7 ~~become operative on the effective date of the regulations.~~

8 *(j) Nothing in this section shall exempt a peer review body from*
9 *submitting a report required under Section 805 or 805.01.*

10 SEC. 9. *Section 821.6 of the Business and Professions Code*
11 *is repealed.*

12 ~~821.6. The board shall adopt regulations to implement the~~
13 ~~monitoring responsibility of the diversion program administrator~~
14 ~~described in subdivision (b) of Section 821.5, and the short form~~
15 ~~required to be developed pursuant to subdivision (g), on or before~~
16 ~~January 1, 1997.~~

17 ~~SEC. 7.~~

18 SEC. 10. Section 2027 of the Business and Professions Code
19 is amended to read:

20 2027. (a) The board shall post on the Internet the following
21 information in its possession, custody, or control regarding licensed
22 physicians and surgeons:

23 (1) With regard to the status of the license, whether or not the
24 licensee is in good standing, subject to a temporary restraining
25 order (TRO), subject to an interim suspension order (ISO), or
26 subject to any of the enforcement actions set forth in Section 803.1.

27 (2) With regard to prior discipline, whether or not the licensee
28 has been subject to discipline by the board or by the board of
29 another state or jurisdiction, as described in Section 803.1.

30 (3) Any felony convictions reported to the board after January
31 3, 1991.

32 (4) All current accusations filed by the Attorney General,
33 including those accusations that are on appeal. For purposes of
34 this paragraph, "current accusation" shall mean an accusation that
35 has not been dismissed, withdrawn, or settled, and has not been
36 finally decided upon by an administrative law judge and the
37 Medical Board of California unless an appeal of that decision is
38 pending.

39 (5) Any malpractice judgment or arbitration award reported to
40 the board after January 1, 1993.

1 (6) Any hospital disciplinary actions that resulted in the
2 termination or revocation of a licensee's hospital staff privileges
3 for a medical disciplinary cause or reason. The posting shall also
4 provide a link to any additional explanatory or exculpatory
5 information submitted electronically by the licensee pursuant to
6 subdivision (f) of Section 805.

7 (7) Any misdemeanor conviction that results in a disciplinary
8 action or an accusation that is not subsequently withdrawn or
9 dismissed.

10 (8) Appropriate disclaimers and explanatory statements to
11 accompany the above information, including an explanation of
12 what types of information are not disclosed. These disclaimers and
13 statements shall be developed by the board and shall be adopted
14 by regulation.

15 (9) Any information required to be disclosed pursuant to Section
16 803.1.

17 (b) (1) From January 1, 2003, the information described in
18 paragraphs (1) (other than whether or not the licensee is in good
19 standing), (2), (4), (5), (7), and (9) of subdivision (a) shall remain
20 posted for a period of 10 years from the date the board obtains
21 possession, custody, or control of the information, and after the
22 end of that period shall be removed from being posted on the
23 board's Internet Web site. Information in the possession, custody,
24 or control of the board prior to January 1, 2003, shall be posted
25 for a period of 10 years from January 1, 2003. Settlement
26 information shall be posted as described in paragraph (2) of
27 subdivision (b) of Section 803.1.

28 (2) The information described in paragraphs (3) and (6) of
29 subdivision (a) shall not be removed from being posted on the
30 board's Internet Web site.

31 (3) Notwithstanding paragraph (2) and except as provided in
32 paragraph (4), if a licensee's hospital staff privileges are restored
33 and the licensee notifies the board of the restoration, the
34 information pertaining to the termination or revocation of those
35 privileges, as described in paragraph (6) of subdivision (a), shall
36 remain posted for a period of 10 years from the restoration date
37 of the privileges, and at the end of that period shall be removed
38 from being posted on the board's Internet Web site.

39 (4) Notwithstanding paragraph (2), if a court finds, in a final
40 judgment, that peer review resulting in a hospital disciplinary

1 action was conducted in bad faith and the licensee notifies the
2 board of that finding, the information concerning that hospital
3 disciplinary action posted pursuant to paragraph (6) of subdivision
4 (a) shall be immediately removed from the board's Internet Web
5 site. For purposes of this paragraph, "peer review" has the same
6 meaning as defined in Section 805.

7 (c) The board shall also post on the Internet a fact sheet that
8 explains and provides information on the reporting requirements
9 under Section 805.

10 (d) The board shall provide links to other Web sites on the
11 Internet that provide information on board certifications that meet
12 the requirements of subdivision (b) of Section 651. The board may
13 provide links to other Web sites on the Internet that provide
14 information on health care service plans, health insurers, hospitals,
15 or other facilities. The board may also provide links to any other
16 sites that would provide information on the affiliations of licensed
17 physicians and surgeons.

18 *SEC. 11. Section 1.5 of this bill incorporates amendments to*
19 *Section 800 of the Business and Professions Code proposed by*
20 *both this bill and SB 819. It shall only become operative if (1) both*
21 *bills are enacted and become effective on or before January 1,*
22 *2010, but SB 819 becomes operative first, (2) each bill amends*
23 *Section 800 of the Business and Professions Code, and (3) this*
24 *bill is enacted after SB 819, in which case Section 800 of the*
25 *Business and Professions Code, as amended by SB 819, shall*
26 *remain operative only until the operative date of this bill, at which*
27 *time Section 1.5 of this bill shall become operative and Section 1*
28 *of this bill shall not become operative.*

29 *SEC. 12. (a) Section 3.5 of this bill incorporates amendments*
30 *to Section 805 of the Business and Professions Code proposed by*
31 *both this bill and SB 821. It shall only become operative if (1) both*
32 *bills are enacted and become effective on or before January 1,*
33 *2010, (2) both bills amend Section 805 of the Business and*
34 *Professions Code, and (3) this bill is enacted after SB 821, in which*
35 *case Section 3 of this bill shall not become operative.*

36 ~~SEC. 8.~~

37 *SEC. 13. This act shall only become operative if Assembly*
38 *Bill 120 of the 2009–10 Regular Session is also enacted and*
39 *becomes operative.*

1 *SEC. 14. In addition to the contingency described in Section*
2 *13 of this bill, all of the following shall apply:*

3 *(a) Section 7 of this bill shall only become operative if Senate*
4 *Bill 821 of the 2009–10 Regular Session is also enacted and*
5 *becomes operative and repeals Section 821.5 of the Business and*
6 *Professions Code.*

7 *(b) Section 8 of this bill shall not become operative if Senate*
8 *Bill 821 of the 2009–10 Regular Session is also enacted and*
9 *becomes operative and repeals Section 821.5 of the Business and*
10 *Professions Code.*

11 *(c) Section 9 of this bill shall not become operative if Senate*
12 *Bill 821 of the 2009–10 Regular Session is also enacted and*
13 *becomes operative and repeals Section 821.6 of the Business and*
14 *Professions Code.*